

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JULY 2, 2015

AMENDED IN SENATE JUNE 9, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 864**

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**Introduced by Assembly Members Williams and Burke**

(Principal coauthor: Senator Jackson)

**(Coauthors: Assembly Members Chiu, Rendon, Mark Stone, Ting,  
and Wood)**

February 26, 2015

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An act to ~~amend Sections 8670.28.5 and 8670.29 of, and to add~~  
Section 51013.1 to, ~~to~~ the Government Code, relating to oil spill  
response.

### LEGISLATIVE COUNSEL'S DIGEST

AB 864, as amended, Williams. Oil spill response: environmentally and ecologically sensitive areas.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act requires owners or operators of various facilities, including pipelines, while operating in the waters of the state or where a spill from the pipelines could impact state waters, to have an oil spill

contingency plan submitted to, and approved by, the administrator for oil spill response to ensure prompt and adequate response and removal action in case of a spill. The act requires the operator to maintain a level of readiness that will allow effective implementation of the applicable contingency plan.

~~This bill would require, by January 1, 2019, the operators of an interstate pipeline near environmentally and ecologically sensitive areas, as provided, to use the best achievable technologies to reduce the amount of oil released in an oil spill to protect the state waters and wildlife, and to include a description of the use of those technologies in their oil spill contingency plans. The bill would require the Office of Spill Prevention and Response to consult with the Office of the State Fire Marshal for technical expertise, and would authorize the office to enter into a memorandum of understanding, as provided, for purposes of implementing the above provisions.~~

The Elder California Pipeline Safety Act of 1981, among other things, requires the State Fire Marshal to adopt hazardous liquid pipeline safety regulations in compliance with the federal law relating to hazardous liquid pipeline safety. The act requires any new pipeline constructed after January 1, 1984, and which normally operates under conditions of constant flow and pressure, to be designed and constructed in accordance with specified federal regulations, and have a means of leak detection and cathodic protection that the State Fire Marshal determines is acceptable. A violation of the act is a crime. Except as provided, the act defines “pipeline” as including every intrastate pipeline used to transport hazardous liquid substances or highly volatile liquid substances, as provided.

This bill would require, by January 1, 2018, any new or replacement pipeline near environmentally and ecologically sensitive areas in the coastal zone to use ~~best achievable~~ *available* technologies to reduce the amount of oil released in an oil spill to protect state waters and wildlife. The bill would require, by July 1, 2018, an operator of an existing pipeline near these sensitive areas to submit a plan to retrofit the pipeline, by January 1, 2020, as provided. By creating a new crime, the bill would impose a state-mandated local program. The bill would require the State Fire Marshal to adopt regulations relating to the above provisions by July 1, 2017.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 8670.28.5 of the Government Code is~~  
2     ~~amended to read:~~  
3     ~~8670.28.5. (a) An operator shall maintain a level of readiness~~  
4     ~~that will allow effective implementation of the applicable~~  
5     ~~contingency plans.~~  
6     ~~(b) (1) By January 1, 2019, an operator of an interstate pipeline~~  
7     ~~subject to Part 195 of Title 49 of the Code of Federal Regulations~~  
8     ~~near environmentally and ecologically sensitive areas in the coastal~~  
9     ~~zone shall use best achievable technology, including, but not~~  
10    ~~limited to, the installation of leak detection technology, automatic~~  
11    ~~shutoff systems, or remote controlled sectionalized block valves,~~  
12    ~~or any combination of these technologies, based on a risk analysis~~  
13    ~~conducted by the operator, to reduce the amount of oil released in~~  
14    ~~an oil spill to protect state waters and wildlife.~~  
15    ~~(2) For purposes of implementing this subdivision, the Office~~  
16    ~~of Spill Prevention and Response shall consult with the Office of~~  
17    ~~the State Fire Marshal for technological expertise and may enter~~  
18    ~~into a memorandum of understanding to clarify roles and~~  
19    ~~responsibilities.~~  
20    ~~(3) By January 1, 2018, the administrator shall develop~~  
21    ~~guidelines to assess the adequacy of the operator's risk analysis~~  
22    ~~and shall determine how near an environmentally and ecologically~~  
23    ~~sensitive area a pipeline must be to be subject to the requirements~~  
24    ~~of this section based on the likelihood of the pipeline impacting~~  
25    ~~that area.~~  
26    ~~(c) For purposes of this section, and notwithstanding paragraph~~  
27    ~~(2) of subdivision (c) of Section 8670.3, the State Fire Marshal~~  
28    ~~shall determine what is the best achievable technology and shall~~  
29    ~~consider the effectiveness and engineering feasibility of the~~  
30    ~~technology when making this determination.~~  
31    ~~SEC. 2. Section 8670.29 of the Government Code is amended~~  
32    ~~to read:~~

~~8670.29.— (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, an owner or operator of a facility, small marine fueling facility, or mobile transfer unit, or an owner or operator of a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo, while operating in the waters of the state or where a spill could impact waters of the state, shall have an oil spill contingency plan that has been submitted to, and approved by, the administrator pursuant to Section 8670.31. An oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of a spill, shall be consistent with the California oil spill contingency plan, and shall not conflict with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).~~

~~(b) An oil spill contingency plan shall, at a minimum, meet all of the following requirements:~~

~~(1) Be a written document, reviewed for feasibility and executability, and signed by the owner or operator, or his or her designee.~~

~~(2) Provide for the use of an incident command system to be used during a spill.~~

~~(3) Provide procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened spill, or spill.~~

~~(4) Describe the communication plans to be used during a spill, if different from those used by a recognized incident command system.~~

~~(5) Describe the strategies for the protection of environmentally sensitive areas.~~

~~(6) Identify at least one rated OSRO for each rating level established pursuant to Section 8670.30. Each identified rated OSRO shall be directly responsible by contract, agreement, or other approved means to provide oil spill response activities pursuant to the oil spill contingency plan. A rated OSRO may provide oil spill response activities individually, or in combination with another rated OSRO, for a particular owner or operator.~~

~~(7) Identify a qualified individual.~~

~~(8) Provide the name, address, and telephone and facsimile numbers for an agent for service of process, located within the~~

1 ~~state and designated to receive legal documents on behalf of the~~  
2 ~~owner or operator.~~

3 ~~(9) Provide for training and drills on elements of the plan at~~  
4 ~~least annually, with all elements of the plan subject to a drill at~~  
5 ~~least once every three years.~~

6 ~~(e) An oil spill contingency plan for a vessel shall also include,~~  
7 ~~but is not limited to, all of the following requirements:~~

8 ~~(1) The plan shall be submitted to the administrator at least~~  
9 ~~seven days prior to the vessel entering waters of the state.~~

10 ~~(2) The plan shall provide evidence of compliance with the~~  
11 ~~International Safety Management Code, established by the~~  
12 ~~International Maritime Organization, as applicable.~~

13 ~~(3) If the oil spill contingency plan is for a tank vessel, the plan~~  
14 ~~shall include both of the following:~~

15 ~~(A) The plan shall specify oil and petroleum cargo capacity.~~

16 ~~(B) The plan shall specify the types of oil and petroleum cargo~~  
17 ~~carried.~~

18 ~~(4) If the oil spill contingency plan is for a nontank vessel, the~~  
19 ~~plan shall include both of the following:~~

20 ~~(A) The plan shall specify the type and total amount of fuel~~  
21 ~~carried.~~

22 ~~(B) The plan shall specify the capacity of the largest fuel tank.~~

23 ~~(d) An oil spill contingency plan for a facility shall also include,~~  
24 ~~but is not limited to, all of the following provisions, as appropriate:~~

25 ~~(1) Provisions for site security and control.~~

26 ~~(2) Provisions for emergency medical treatment and first aid.~~

27 ~~(3) Provisions for safety training, as required by state and federal~~  
28 ~~safety laws for all personnel likely to be engaged in oil spill~~  
29 ~~response.~~

30 ~~(4) Provisions detailing site layout and locations of~~  
31 ~~environmentally sensitive areas requiring special protection.~~

32 ~~(5) Provisions for vessels that are in the operational control of~~  
33 ~~the facility for loading and unloading.~~

34 ~~(e) Unless preempted by federal law or regulations, an oil spill~~  
35 ~~contingency plan for a railroad also shall include, but is not limited~~  
36 ~~to, all of the following:~~

37 ~~(1) A list of the types of train cars that may make up the consist.~~

38 ~~(2) A list of the types of oil and petroleum products that may~~  
39 ~~be transported.~~

40 ~~(3) A map of track routes and facilities.~~

1     ~~(4) A list, description, and map of any prestaged spill response~~  
2 ~~equipment and personnel for deployment of the equipment.~~

3     ~~(f) (1) An oil spill contingency plan for an interstate pipeline~~  
4 ~~subject to Part 195 of Title 49 of the Code of Federal Regulations~~  
5 ~~near environmentally and ecologically sensitive areas in the coastal~~  
6 ~~zone subject to the requirements of subdivision (b) of Section~~  
7 ~~8670.28.5 shall include a description of how the operators are~~  
8 ~~using the best achievable technology, including, but not limited~~  
9 ~~to, installation of leak detection technologies, automatic shutoff~~  
10 ~~systems, or remote controlled sectionalized block valves, or any~~  
11 ~~combination of these technologies, based on a risk analysis~~  
12 ~~conducted by the operator, to reduce the amount of oil released in~~  
13 ~~an oil spill to protect state waters and wildlife.~~

14     ~~(2) For purposes of this subdivision, and notwithstanding~~  
15 ~~paragraph (2) of subdivision (c) of Section 8670.3, the State Fire~~  
16 ~~Marshal shall determine what is the best achievable technology~~  
17 ~~and shall consider the effectiveness and engineering feasibility of~~  
18 ~~the technology when making this determination.~~

19     ~~(g) The oil spill contingency plan shall be available to response~~  
20 ~~personnel and to relevant state and federal agencies for inspection~~  
21 ~~and review.~~

22     ~~(h) The oil spill contingency plan shall be reviewed periodically~~  
23 ~~and updated as necessary. All updates shall be submitted to the~~  
24 ~~administrator pursuant to this article.~~

25     ~~(i) In addition to the regulations adopted pursuant to Section~~  
26 ~~8670.28, the administrator shall adopt regulations and guidelines~~  
27 ~~to implement this section. The regulations and guidelines shall~~  
28 ~~provide for the best achievable protection of waters and natural~~  
29 ~~resources of the state. The administrator may establish additional~~  
30 ~~oil spill contingency plan requirements, including, but not limited~~  
31 ~~to, requirements based on the different geographic regions of the~~  
32 ~~state. All regulations and guidelines shall be developed in~~  
33 ~~consultation with the Oil Spill Technical Advisory Committee.~~

34     ~~(j) Notwithstanding subdivision (a) and paragraph (6) of~~  
35 ~~subdivision (b), a vessel or facility operating where a spill could~~  
36 ~~impact state waters that are not tidally influenced shall identify a~~  
37 ~~rated OSRO in the contingency plan no later than January 1, 2016.~~

38     ~~SEC. 3.~~

39     ~~SECTION 1.~~ Section 51013.1 is added to the Government Code,  
40 to read:

1 51013.1. (a) By January 1, 2018, any new or replacement  
2 pipeline near environmentally and ecologically sensitive areas in  
3 the coastal zone shall use best-~~achievable~~ *available* technology,  
4 including, but not limited to, the installation of leak detection  
5 technology, automatic shutoff systems, or remote controlled  
6 sectionalized block valves, or any combination of these  
7 technologies, based on a risk analysis conducted by the operator,  
8 to reduce the amount of oil released in an oil spill to protect state  
9 waters and wildlife.

10 (b) (1) By July 1, 2018, an operator of an existing pipeline near  
11 environmentally and ecologically sensitive areas in the coastal  
12 zone shall submit a plan to retrofit, by January 1, 2020, existing  
13 pipelines near environmentally and ecologically sensitive areas in  
14 the coastal zone with the best-~~achievable~~ *available* technology,  
15 including, but not limited to, installation of leak detection  
16 technologies, automatic shutoff systems, or remote controlled  
17 sectionalized block valves, or any combination of these  
18 technologies, based on a risk analysis conducted by the operator  
19 to reduce the amount of oil released in an oil spill to protect state  
20 waters and wildlife.

21 (2) An operator may request confidential treatment of  
22 information submitted in the plan required by paragraph (1) or  
23 contained in any documents associated with the risk analysis  
24 described in this section, including, but not limited to, information  
25 regarding the proposed location of automatic shutoff valves or  
26 remote controlled sectionalized block valves.

27 (c) The State Fire Marshal shall adopt regulations pursuant to  
28 this section by July 1, 2017. The regulations shall include, but not  
29 be limited to, all of the following:

30 (1) A definition of automatic shutoff systems.

31 (2) A process to assess the adequacy of the operator's risk  
32 analysis.

33 (3) A process by which an operator may request confidential  
34 treatment of information submitted in the plan required by  
35 paragraph (1) of subdivision (b) or contained in any documents  
36 associated with the risk analysis described in this section.

37 (4) A determination of how near to an environmentally and  
38 ecologically sensitive area a pipeline must be to be subject to the  
39 requirements of this section based on the likelihood of the pipeline  
40 impacting those areas.

(d) An operator of a pipeline near environmentally and ecologically sensitive areas in the coastal zone shall notify the Office of the State Fire Marshal of any new construction or retrofit of pipeline in these waters.

(e) For purposes of implementing this section, the State Fire Marshal shall consult with the Office of Spill Prevention and Response about the potential impacts to state water and wildlife.

(f) For purposes of this section, “environmentally and ecologically sensitive areas” is the same term as described in subdivision (d) of Section 8574.7.

(g) (1) For purposes of this section, “~~best achievable~~ *available* technology” means ~~that technology that provides the greatest degree of protection, protection by limiting the quantity of release in the event of a spill, taking into consideration both of the following: whether the processes are currently in use and could be purchased anywhere in the world.~~

~~(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.~~

~~(B) Processes that are currently in use anywhere in the world.~~

(2) The State Fire Marshal shall determine what is the best ~~achievable~~ *available* technology and shall consider the effectiveness and engineering feasibility of the technology when making this determination.

~~SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.~~

~~SEC. 5.~~

~~SEC. 2.~~ No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.